

UNITED STATES DEPARTMENT OF AGRICULTURE  
Rural Electrification Administration

**BULLETIN 1755E-525**

**SUBJECT:** Central Office Equipment Contract (Including  
Installation) REA Contract Form 525

**TO:** All Telephone Borrowers  
REA Telephone Staff

**EFFECTIVE DATE:** July 18, 1994

**EXPIRATION DATE:** Date of change of 7 CFR part 1755.525, by  
rulemaking

**OFFICE OF PRIMARY INTEREST:** Central Office Equipment Branch,  
Telecommunications Standards Division

**FILING INSTRUCTIONS:** File with 7 CFR 1755 and on REANET.

**PURPOSE:** This bulletin provides a user-friendly reformatting of  
the Central Office Equipment Contract (Including Installation),  
(REA Form 525), codified at 7 CFR §1755.525, as published on  
June 17, 1994, at 59 FR 31120. This bulletin presents the  
codified REA Form 525 in a detachable, usable format.

Every effort has been made to ensure the accuracy of this  
document. However, in case of discrepancies, the regulation at  
7 CFR §1755.525 is the authorized source.

Adam Golodner

7/11/94

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Administrator

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Date

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## ABBREVIATIONS and ACRONYMS

CFR Code of Federal Regulations  
EEO Equal Employment Opportunity  
REA Rural Electrification Administration

### 1. GENERAL

The Central Office Equipment Contract (Including Installation) REA Form 525 contained in this bulletin is a detachable, usable reformatting of the Central Office Equipment Contract codified at 7 CFR §1755.525. This contract is to be used with any REA financed central office equipment that requires the use of REA Form 525.

Divestiture, competition, legislation, and regulation have brought about many changes in the conduct of telecommunications business. The revised Form 525 Contract incorporates these changes into the Central Office Equipment Contract.

### 2. INSTRUCTIONS FOR USE

Remove the attached REA Form 525 and use it with any REA financed central office equipment that requires the use of REA Form 525.

# **Central Office Equipment Contract**

**(Including Installation)**

REA Contract Form 525

**U.S. Department of Agriculture  
Rural Electrification Administration**

Public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0572-0059), Washington, D.C. 20503.

**NOTICE AND INSTRUCTIONS TO BIDDERS  
CENTRAL OFFICE EQUIPMENT PROJECT  
(Including Installation)**

**1.** Sealed Proposals for the engineering, furnishing, delivery, and installation of central office equipment, materials and software for the \_\_\_\_\_

(hereinafter called the "Owner") which is to be part of the system known as \_\_\_\_\_

to be financed pursuant to a loan contract between the Owner and the United States of America (hereinafter called the "Government") by the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator") will be received by the Owner on or before

\_\_\_\_\_ o'clock, \_\_\_\_ .M., \_\_\_\_\_, at \_\_\_\_\_

at which time and place the Proposals will be publicly opened and read. The Rural Telephone Bank may also be a party to the loan contract.

**2.** The Bid Documents (composed of plans, specifications and drawings), together with all necessary forms and other documents for Bidders, may be obtained from the Owner or from the Engineer, at the latter's office at \_\_\_\_\_.

The Specifications may be examined at the office of the Owner or at the office of the Engineer. A copy of the loan contract between the Owner and the Government may be examined at the office of the Owner.

Each set of Bid Documents will have a serial number, assigned by the Engineer, and the number of each set with the name of the Bidder will be recorded by the Engineer. Bids will be accepted only from original Bidders, or from some other qualified Bidder to whom such a set has been transferred by the original Bidder with the approval of the Engineer prior to the pre-bid technical session.

**3.** A pre-bid technical session will be held with each Bidder during the week of \_\_\_\_\_, 19\_\_ at \_\_\_\_\_.

for the purpose of receiving the Bidder's Technical Proposal, discussing details of the Project(s), and considering suggestions from Bidders. The Owner shall attach to this Notice a list of the information required in the Bidder's Technical Proposal. Each Bidder will be given a specific time period for the pre-bid technical session. At the pre-bid technical session, the Bidder shall fully describe to the Owner any exceptions to the Specifications the Bidder may request. In addition, the Bidder shall identify all features and capabilities that are not fully

developed or do not have a verifiable satisfactory field performance record. If the Owner decides to incorporate any changes into the Specifications, the Owner shall furnish all prospective Bidders a copy of the Specifications containing such revisions (the "Revised Specifications") and all Bids shall be made on the basis of the Revised Specifications. At this session, the Bidder shall identify all documentation and materials that it claims constitute agreed excluded documentation under Section (2)(xi) of the Software License. The Bidder shall claim as agreed excluded documentation only those items it may be unable to provide to the Borrower as required by said Section (2)(xi). The Engineer shall immediately provide a list of all items so identified to [appropriate REA office]. The Engineer shall inform the Bidder at least \_\_\_\_\_ days before the scheduled bid opening whether either the Engineer or [REA] will reject the Bid because of items so identified. Licensor agrees that certain Licensed Software cannot be excluded from the requirements of said Section (2)(xi), including but not limited to software that would significantly impair the operation of the System, would significantly impair the ability of the Owner to generate revenue, or would pose a risk to REA loan security. If allowed, the agreed excluded documentation shall be individually identified in an attachment to the Bid. No bid shall be accepted from a Bidder who fails to attend the pre-bid technical session or fails to demonstrate to the Owner that its equipment meets the requirements of the Plans and Specifications.

4. Proposals shall be submitted on the forms furnished by the Owner and must be delivered in a sealed envelope addressed to the Owner. The name and address of the Bidder, its license number, if a license is required for bidding on a project by the State, and the date and hour of the opening of bids must appear on the envelope in which the Proposal is submitted. Proposals must be in ink or typewritten. No alterations or interlineations will be permitted, unless made, initialed, and dated before submission.

5. Prior to the submission of the Proposal, the Bidder shall make and shall be deemed to have made a careful examination of the Specifications, forms of Bidder's Proposal and Acceptance, and Contractor's Bond attached hereto, and shall become informed as to the location and characteristics of the proposed central office and remote terminal installations, features and services, the transportation facilities, the kind of facilities required before and during the delivery and installation of the equipment and materials, the general local conditions and all other matters that may affect the cost and the time of completion of the installations. Bidders will be required to comply with all applicable statutes, codes, and regulations, including those pertaining to the licensing of contractors and the "Anti Kick-Back Acts," as amended, (40 U.S.C. 276c; 41 U.S.C. 51 et seq.) and regulations issued pursuant thereto, and 18 U.S.C. 287, 874, 1001, as amended.

6. Each Proposal must be accompanied by a Bid Bond, in the form attached, or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to ten percent (10%) of the maximum possible bid price. The maximum possible bid price is the sum of the total base bid, spare parts, maintenance tools and all positive amounts for alternates. Each Bidder agrees that, if its Proposal is one of the three low Proposals, its Bid Bond or check shall be held by the Owner until a Proposal is accepted and Contractor's Bond, when required, is furnished by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed ninety (90) days from the date hereinbefore set for the opening of Proposals whichever period shall be the shorter. If such Proposal is not one of the three low Proposals, the Bid Bond or check will be returned to the Bidder within a period of thirty (30) days.

7. The successful Bidder will be required to furnish to the Owner a Contractor's Bond in conformance with the requirements of 7 CFR Part 1788 Subpart C, Insurance for Contractors, Engineers, and Architects.

8. Should the successful Bidder fail or refuse to furnish a Contractor's Bond within thirty (30) days after written notification of the award of the Contract by the Owner, the Bidder will be considered to have abandoned the Proposal. In such event, the Owner shall be entitled (a) to enforce the Bid Bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the Owner may in good faith contract with another party to construct the Project(s). The term "successful Bidder" shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the Contract or to furnish a Contractor's Bond.

9. If requested by the Owner or the Administrator, the Bidder shall furnish evidence, satisfactory to the Owner and the Administrator, that the Bidder has the necessary facilities, ability, and financial resources to perform the Contract.

10. The Contract, when executed, shall be deemed to include the entire agreement between the parties thereto and neither party shall claim any modification thereof resulting from any representation or promise made at any time by any officer, agent, or employee of the other or by any other person.

11. The Owner reserves the right to waive minor irregularities or minor errors in any Proposal, if it appears to the Owner that such irregularities or errors were made through inadvertence. Any such irregularities or errors so waived must be corrected on the Proposal in which they occur prior to the



goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with Executive Order 11246 (3 CFR, 1963-1965 Comp., p. 340) and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. Transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, Executive Order 11246 and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

(d) As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is

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(insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any.)

NOTE: Paragraph 14 is applicable to the extent required by law. If applicable, certain information needs to be inserted at subparagraphs (b) and (d). In determining whether and how this paragraph is applicable, reference should be made to Office of Federal Contract Compliance Programs regulations (41 CFR chapter 60).

By \_\_\_\_\_  
OWNER

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE



**BIDDER'S PROPOSAL  
TO  
ENGINEER, FURNISH, DELIVER, AND INSTALL EQUIPMENT,  
MATERIALS AND SOFTWARE**

(Proposal shall be submitted in ink or typewritten)

To: \_\_\_\_\_  
(HEREINAFTER CALLED THE "OWNER")

The undersigned (hereinafter called the "Bidder") hereby proposes to engineer, furnish, deliver, and install the equipment, materials and software for each Project listed under Column 1, "Project," in Article I, Section 1, and described in the plans, specifications and drawings (hereinafter called the "Specifications") prepared by the Owner and attached hereto and made a part hereof, financed by a loan to the Owner made or guaranteed by the United States of America, acting through the Administrator of the Rural Electrification Administration (hereinafter called the "Administrator"), or by loans to the Owner by the United States of America and by the Rural Telephone Bank, and designated \_\_\_\_\_.

The Bidder has become informed as to the location and characteristics of the proposed installations, has become informed as to the kind of facilities required before and during the delivery and installation of the equipment, material, and software and has become acquainted with the labor conditions which would affect the work.

The Bidder agrees that if its bid is accepted the following terms and conditions shall govern.

If, in submitting this Proposal, the Bidder has taken any exception to the form of proposal furnished by the Owner, the Bidder understands that the Owner and the Administrator may evaluate the effect of such change as they see fit and they may exclude the Proposal from consideration in determining the award of the Contract.

**Replace this page with Article I, Section 1  
Available on hard copy only**

**Section 2. Acceptable Equipment.** Unless otherwise specified by the Owner (and agreed to in advance in writing by REA), the Bidder agrees to furnish under this Proposal only equipment which is currently covered by a letter of acceptance issued by the Chairman, Committee "A" (Telephone). [Note: for convenience of borrowers and others, domestically manufactured products are included in REA Bulletin 1755I-100.] The Bidder agrees also to furnish only materials, equipment and software which are new and of most recent issue and manufacture, as of the date of the bid opening, or of near future release for which the Bidder can assure timely delivery.

**Section 3. Changes in Project.** The Owner, with the approval of the Administrator, may from time to time during the performance of the Contract effected by the acceptance of this Proposal, make reasonable changes, additions to or subtractions from the Specifications which are part of the Proposal as conditions may warrant. However, if substantial changes in the Project shall require an extension of time, a reasonable extension will be granted if the Bidder shall make a written request therefor to the Owner within thirty (30) days after any such change is made. Further, if the cost to the Bidder shall be increased or decreased by any such change or addition, the Contract price shall be increased or decreased by a reasonable amount in accordance with a contract amendment signed by the Owner and the Bidder and approved by the Administrator. No claim for additional compensation for any such change or addition will be considered unless the Bidder shall have made a written request therefor to the Owner prior to the commencement of work in connection with such change or addition. The Delivery or Completion of Installation times specified under Columns 5, "Delivery", and 6, "Completion of Installation," in Article I, Section 1, can only be changed by a Contract amendment approved by the Bidder, the Owner and REA.

**Section 4. Taxes.** The bid prices herein set forth do not include any amounts payable by the Bidder or the Owner on account of taxes imposed by any taxing authority upon the sale, purchase or use of materials, supplies, equipment or software to be incorporated in the Project(s). If any such tax is applicable to the sale, purchase or use of materials, supplies, equipment or software hereunder, the amount thereof shall be stated separately on all invoices and paid by the Owner.

## ARTICLE II

### Delivery and Installation

**Section 1. Time of Completion of Installation.** The time of delivery of materials, equipment, and software and of Completion of Installation are of the essence of this Contract. The Bidder shall deliver the materials, equipment, and software required hereunder for each Project upon the time intervals established under Column 5, "Delivery," in Article I, Section 1, after the Administrator shall have approved this Contract in writing, and shall prosecute diligently and complete the installation of materials, equipment and software for each Project in accordance with the terms of this Contract and Specifications to the satisfaction of the Owner and the Administrator within the number of calendar days specified under Column 6, "Completion of Installation," in Article I, Section 1. The times for such Delivery or such Completion of Installation shall be extended for the period of any reasonable delay due exclusively to causes beyond the control and without the fault of the Bidder, including, but not limited to, acts of God, fires, strikes, floods, changes in the Specifications as herein provided, and acts or omissions of the Owner with respect to matters for which the Owner is solely responsible. However, no such extension of time shall be granted the Bidder unless within thirty (30) days after Bidder becomes aware of the happening of any event relied upon by the Bidder for such an extension of time the Bidder shall have made a request therefor in writing to the Owner. Further, no delay in such time for delivery of materials, equipment and software or Completion of Installation or in the progress of the work shall result in any liability on the part of the Owner, except that the Owner shall be responsible for and shall pay the Bidder on demand all additional, supportable costs and expenses incurred by the Bidder due to delays to the extent such delays are caused by the Owner's failure to perform its obligations under this Contract unless the Owner's failure to perform is caused by forces beyond its control.

**Section 2. Sequence of Installation.** All Projects shall be completed in the sequence in which they are listed under Column 1, "Project," in Article I, Section 1.

**Section 3. Supervision and Inspection.** The Bidder shall give sufficient supervision to the work at the site of the Project(s), using the Bidder's best skill and attention. The Bidder shall carefully study and compare all drawings, specifications, and other instructions and shall promptly report to the Owner any error, inconsistency or omission which Bidder may discover. The Bidder shall keep on the Project(s) during its progress a competent superintendent (hereinafter called the "Superintendent") and any necessary qualified assistants, all satisfactory to the Owner. The Superintendent shall represent the Bidder and all directions given to the Superintendent by the Owner shall be as binding as if given to the Bidder. When

requested by the Bidder, such directions shall be confirmed in writing.

**Section 4. Inspection and Tests.** The installation of materials, equipment and software hereunder and all materials, equipment and software used therein shall be subject to the inspection, test and approval of the Owner and Administrator, in accordance with the Specifications. The Bidder shall furnish all pertinent information required concerning the nature or source of materials. The Owner and the Administrator shall have the right to inspect pertinent records (other than manufacturing cost information) of the Bidder and of any subcontractor relevant to this Project(s). The Bidder shall provide all reasonable facilities necessary for such inspection and tests, except that the Bidder is not required to provide test equipment for the Owner's tests unless specifically required in the Specifications. Failure of the Owner to make inspections shall not release the Bidder from performance required hereunder.

The Bidder shall notify the Owner in writing upon Completion of Installation of each Project and provide a copy of the results of tests, if any, conducted by the Bidder.

The Owner shall make inspections and tests of each Project for compliance with the Specifications and provide the Bidder the results of such inspections and tests on REA Form 517, Results of Acceptance Tests. If the Owner has not completed its inspections and tests and provided the Bidder the results on REA Form 517 within thirty (30) days after the written notification of Completion of Installation from the Bidder, the Owner shall (1) pay to the Bidder the costs incurred by the Bidder as a result of this delay, and (2) grant an extension of time for the Completion of the Project equal to the number of days from the date of the end of the thirty (30) day period until the date the Owner provides the REA Form 517 to the Bidder.

Within thirty (30) days of receipt of the REA Form 517 from the Owner, the Bidder shall correct all deficiencies, if any, listed on the REA Form 517 and notify the Owner in writing of such corrections and deliver to the Owner the documents set forth in Article III, Section 2, at which time a final Owner's inspection and test of each Project shall be conducted. If tests subsequent to this are made necessary by the Bidder's failure to satisfactorily resolve all such deficiencies as previously listed on the REA Form 517, the Bidder shall pay the Owner for the cost incurred by the Owner for all such subsequent tests.

**Section 5. Delivery of Possession and Control to the Owner.** The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of Completion of the Project or on an earlier date if agreed under Article IV, Section 2.

**Section 6. Employees.** The Owner shall have the right to require the removal of any employee of the Bidder from the Project site if in the judgment of the Owner such removal is necessary in order to protect the interest of the Owner.

**Section 7. Defective Workmanship, Materials or Software.** Throughout the warranty period defined below the Bidder shall, within thirty (30) days of written notice from the Owner, and without charge to the Owner, at the Bidder's option, either remedy or replace any materials, equipment or software found to be defective in material, workmanship or installation, or not in conformity with the Specification. This is subject to the following definitions and conditions:

(a) The warranty start date for a Project is the date of delivery of possession and control by the Bidder to the Owner of that Project included in the Contract. Refer to Article II, Section 5. The warranty period is twelve (12) months from the warranty start date, or six (6) months from Completion of the Project, whichever results in the longer period of coverage.

(b) Without regard to the expiration of the warranty period set forth above, the Bidder warrants to the Owner that any Software furnished under this Contract shall function, for a period of five (5) years from the warranty start date defined in the Contract, in accordance with the specifications and any written or printed technical material provided by the Bidder to explain the operation of the Software and aid in its use. The Bidder shall correct all deficiencies within thirty (30) days from the date of receipt by the Bidder of written notice of such deficiencies from the Owner. An extension of this thirty (30) day period may be allowed only if agreed upon by the Owner. It shall be the Bidder's obligation to insert and thoroughly test, at no charge to the Owner, any software amendment or alteration provided to satisfy the obligations of this Section 7. If a deficiency is detected or a correction made within the final ninety (90) days of the warranty, the warranty shall be extended to a date ninety (90) days after the deficiency has been corrected.

(c) The Owner shall pay the Bidder for any use of the Bidder's technical assistance center except for usage to diagnose defects covered by this warranty.

(d) This warranty is not diminished by the acceptance of workmanship, materials, equipment, or software, or by the issuing of any certificate with respect to Completion of the Project.

(e) This warranty does not cover defects in materials, equipment or software that are caused by modifications to or abuse of materials, equipment or software by the Owner.

(f) The Owner shall bear the cost and risk of shipping defective components to the Bidder's designated repair center. The Bidder shall bear the cost and risk of shipping new or repaired replacement components to the Owner.

### **ARTICLE III**

#### **Payments and Releases of Lien**

##### **Section 1. Payment to Bidder.**

(a) The Owner shall pay the Bidder upon the basis of written estimates of the materials, equipment, and software delivered at the site of the Project, presented by the Bidder, and approved by the Owner, the following percentages of the price of the materials, equipment, and software for each Project set forth under Column 2, "Materials, Equipment, and Software," in Article I, Section 1, as and if revised:

(i) Forty-five percent (45%) when fifty percent (50%) of the materials, equipment, and software for each Project has been delivered at the site of the Project, and

(ii) Ninety percent (90%) when all the materials, equipment, and software required to place each Project into operation has been delivered at the site of the Project.

(b) Upon written notification of the Completion of Installation of each Project, the Owner shall pay the Bidder ninety percent (90%) of the Base Bid plus accepted alternates for that Project.

(c) Upon the Completion of Installation, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, the Owner shall inspect the work performed hereunder and if the work shall be found to be in accordance with the Specifications and all provisions hereunder, the Owner shall certify as to that fact and as to the amount of the balance found to be due to the Bidder. No later than thirty (30) days after Completion of the Contract, as defined in Article VII, Section 1, "Definitions," the Owner shall submit such final certificate to the Administrator for approval and when such approval has been given, the Owner shall pay to the Bidder all unpaid amounts to which the Bidder shall be entitled hereunder; provided, however, such final payments shall be made not later than sixty (60) days after Completion of the Contract unless approval by the Administrator shall be withheld or delayed due to Bidder's actions or failure to act.

(d) Payment on undisputed invoices submitted by the Bidder shall be due thirty (30) days after receipt. Any amounts of these invoices not paid when due shall accrue interest at a rate one and one-half percent (1 1/2%) higher than the "Prime Rate" published in the Wall Street Journal in its first issue of the month in which payment becomes due and changing each subsequent month with the first issue published in the respective month.

(e) Notwithstanding other provisions of this Article III, the Bidder, shall, at its request in writing, receive payment in

full for each Project upon Completion of Installation of such and upon:

(i) Completion of the final acceptance tests of such Project as certified on REA Form 754, Certificate of Completion, Central Office(s) and approved by the Owner.

(ii) Submission to the Owner and Administrator of the releases of lien and Certificate of Contractor referred to in Section 2 hereof or in lieu thereof, where the Bidder is the manufacturer, the execution of the Certificate of Contractor and Indemnity Agreement on REA Form 754, all in respect of such Project.

(iii) Approval by the Administrator of the Certificate of Completion, REA Form 754 in respect of such Project.

Ten percent (10%) of the contract price of one central office shall be retained until the Bidder shall have furnished the certificates and releases of lien or indemnity agreement in respect of the Project required by Section 2 of this Article III.

**(This Section 1(e) is to be used only if (1) the Contract includes at least one central office and (2) the Owner wishes to allow the partial closeout procedure. The Owner shall strike out this Section 1(e) if the partial closeout procedure is not to be allowed)**

(f) Acceptance by the Owner of equipment, materials, workmanship or software while the Bidder is in default under any provision of this Contract shall not be construed as a waiver by the Owner of any right hereunder including, without limitation, any right to liquidated damages the Owner may have by virtue of Article V, Section 2.

**Section 2. Release of Liens.** Upon the Completion of Installation by the Bidder, but prior to the payment to the Bidder of any amount in excess of ninety percent (90%) of the Total Contract Price, except as specified in Article III, Section 1(e), the Bidder shall deliver to the Owner (a) two original Waiver and Release of Lien in the form attached hereto, from manufacturers, material suppliers and subcontractors who have furnished materials or services for the work, and (b) two original Certificate of Contractor, in the form attached hereto, to the effect that all labor has been paid and that all such releases have been submitted to the Owner; and the Owner shall deliver to the Administrator for approval one of the originals of each such release and certificate.

In lieu of releases of lien where the Bidder is the manufacturer of the equipment, the Bidder may deliver to the Owner, in duplicate in the form attached hereto, a Certificate of Contractor and Indemnity Agreement, stating that all manufacturers, material suppliers and subcontractors who have



furnished materials or services for the Project(s) have been paid in full, and agreeing to indemnify the Owner against any liens arising out of the Bidder's performance hereunder which may have been or may be filed against the Owner.

In this Article III "manufacturer" shall mean a Bidder who makes, produces, or manufactures the equipment and whose interest, including non-contracted installation, represent more than fifty percent (50%) of the value of the Total Contract Price.

## ARTICLE IV

### Particular Undertakings of the Bidder

**Section 1. Protection to Persons and Property.** At all times when equipment and materials are being delivered and installed the Bidder shall exercise reasonable precautions for the safety of employees on the job and of the public and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State or Municipal laws or regulations. The following provisions shall not limit the generality of the above requirements:

(a) The Bidder shall at all times keep the premises free from accumulations of waste material or rubbish caused by its employees or work, and at the completion of the work the Bidder shall remove all rubbish from and about the Project(s) and all its tools, scaffolding and surplus materials and shall leave its work "broom clean."

(b) The work, from its commencement to completion, or to such earlier date or dates when the Owner may take possession and control, shall be under the charge and control of the Bidder and during such period of control by the Bidder all risks in connection therewith, and in connection with the equipment, materials and software to be used therein, shall be borne by the Bidder. The Bidder shall make good and fully repair all injuries and damages to the equipment, materials and software under the control of the Bidder by reasons of any act of God, or any other casualty or cause whether or not the same shall have occurred by reason of the Bidder's negligence. The Bidder shall hold the Owner harmless from any and all claims for injuries of persons or for damage to property happening by reason of any negligence on the part of the Bidder or any of the Bidder's agents, subcontractors or employees during the control by the Bidder of the Project(s) or any part thereof. The Owner shall promptly notify the Bidder in writing of any such claims received and, except where the Owner is the claimant, shall give to the Bidder full authority and opportunity to settle such claims, and reasonably cooperate with the Bidder in obtaining information relative to such claims.

(c) Monthly reports of all accidents shall be promptly submitted to the Owner by the Bidder giving such data as may be prescribed by the Owner.

**Section 2. Termination of Bidder's Risks and Obligations.** The Bidder shall deliver to the Owner, and the Owner shall accept, full possession and control of each Project on the date of Completion of the Project. However, at any time after payment

by the Owner to the Bidder of ninety percent (90%) of the Total Base Bid plus accepted alternates for that Project, but prior to Completion of the Project, the Owner and the Bidder may agree in writing to an earlier date of delivery of possession and control. Upon such delivery of possession and control of any Project the Bidder's risks and obligations as set forth in Article IV, Section 1(b), pertaining to such Project shall be terminated; provided, however, that nothing herein contained shall relieve the Bidder of its obligation for full performance under the Specifications, or its liability with respect to defective workmanship or materials as specified in Article II, Section 7 hereof. The equipment shall not be placed in service until delivery of possession and control to the Owner has been accomplished, as set forth above.

**Section 3. Insurance.** During the Bidder's performance hereunder, the Bidder shall take out and maintain fully paid insurance providing not less than the minimum coverage required by 7 CFR Part 1788, Subpart C.

The Owner shall have the right to require public liability insurance and property damage liability insurance in an amount greater than those required in 7 CFR Part 1788, Subpart C. If this requirement is included in the plans and specifications used for bidding, the added costs shall be included in the bid price. If the requirement is added after the Contract is approved, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the Contract price, by Contract amendment.

Upon request by the Administrator, the Bidder shall furnish to the Administrator a certificate in such form as the Administrator may prescribe evidencing compliance with the foregoing requirements.

**Section 4. Purchase of Materials.** The Bidder shall purchase all materials and supplies except software outright and not subject to any conditional sales agreements, bailment lease or other agreement reserving unto the seller any right, title or interest therein. Materials and supplies other than software shall become the property of the Owner as the Owner makes payments therefor to the Bidder in accordance with Article III, Section 1(a).

**Section 5. Software License.** The software licensing agreement, if required, covering the rights, terms and conditions of the use and assignability of all software integral to the operation of the Project(s), shall be in the form of Addendum 1 to this Contract.

**Section 6. Assignment of Guarantees.** All guarantees of materials, equipment, workmanship and software running in favor of the Bidder shall be transferred and assigned to the Owner upon Completion of the Project and at such time as the Bidder receives

final payment. Any such guarantees shall be in addition to the Bidder's warranty defined in Article II, Section 7. This provision may be modified with respect to a particular warranty if the Bidder demonstrates to the satisfaction of REA and the Owner that a transfer is not possible.

**Section 7. Patent, Copyright, Trademark and Trade Secret Infringement.** The Bidder shall hold harmless and indemnify the Owner from any and all claims, suits, and proceedings for the infringement of any patent, copyright, trademark or violation of trade secrets covering any equipment or software used in the work, except for items of the Owner's design or selection. If the Owner's use of equipment or software is enjoined, the Bidder shall promptly, at its own expense, modify or replace the infringing equipment or software so that it no longer infringes but remains functionally equivalent, or obtain for the Owner a license or other right to use. This shall be in addition to any other rights or claims which the Owner may have. The Bidder shall, at its own expense, (and the Owner agrees to permit Bidder to do so,) defend any suits which may be instituted by any party against the Owner for alleged infringement of patents, copyright, trademark or violation of trade secrets relative to the Bidder's performance hereunder. Either party shall notify the other promptly of any such claims, and the Owner shall give to the Bidder full authority and opportunity to settle such claims, and shall reasonably cooperate with the Bidder in obtaining information relative to such claims.

**Section 8. Compliance with Statutes and Regulations.** The Bidder shall comply with all applicable laws, statutes, ordinances, rules and regulations. The Bidder acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 et seq.), the Anti-Kickback Acts, as amended (40 U.S.C. 276c; 41 U.S.C. 51 et seq.), and any rules and regulations issued pursuant thereto, and 18 U.S.C. 201, 286, 287, 641, 666, 874, 1001, 1361 and 1366, as amended. The Bidder understands that the obligations of the parties hereunder are subject to the applicable regulations and orders of the Governmental agencies having jurisdiction in the premises.

The Bidder represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR Part 3017, it has submitted to the Owner a duly executed certification in the form prescribed in 7 CFR Part 3017.

The Bidder represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

## ARTICLE V

### Remedies

**Section 1. Completion on Bidder's Default.** If default shall be made by the Bidder in the performance of any of the work hereunder, the Owner, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Bidder and the surety or sureties upon the Bidder's Bond or Bonds a written notice requiring the Bidder to cause such default to be corrected forthwith. Unless within thirty (30) days after the service of such notice upon the Bidder such default shall be corrected or arrangements for the correction thereof, satisfactory to both the Owner and the Administrator, shall have been made by the Bidder or its surety or sureties, the Owner may take over the performance of the Bidder's obligations hereunder and prosecute the same to completion by contract or otherwise for the account and at the expense of the Bidder, and the Bidder and its surety or sureties shall be liable to the Owner for any supportable cost or expense in excess of the bid price occasioned thereby. In such event, the Owner may take possession of and utilize, in completing the Project(s), any tools, supplies, equipment, appliances and plant belonging to the Bidder which may be situated at the site of the Project(s). The Owner, in such contingency, may exercise any rights, claims or demands which the Bidder may have against third persons in connection herewith and for such purpose the Bidder does hereby assign, transfer and set over unto the Owner all such rights, claims and demands.

**Section 2. Liquidated Damages.** Should the Bidder fail to complete any Project as shown under Column 7, "Completion of the Project," in Article I, Section 1, within the time herein agreed upon, after giving effect to extensions of time, if any, herein provided, then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the Owner shall, so long as the subject Project shall not have been placed in service, have the right to deduct from and retain out of such moneys which may be then due, or which may become due and payable to the Bidder, the sum of:

_____ dollars (\$_____)	for _____
	(Project)
_____ dollars (\$_____)	for _____
	(Project)
_____ dollars (\$_____)	for _____
	(Project)
_____ dollars (\$_____)	for _____
	(Project)
_____ dollars (\$_____)	for _____
	(Project)

per day for each and every day that such completion is delayed beyond the scheduled time for Completion of the Project, as liquidated damages and not as a penalty, up to the amount of the

respective Base Bid plus accepted alternates for the affected Project; provided, however, that the Owner shall promptly notify the Bidder in writing of the manner in which the amount claimed as liquidated damages was computed. The Bidder shall pay to the Owner the amount necessary to effect such payment in full. Such payment is not to be reduced by the value of any partial performance by the Bidder.

At the technical sessions, each Bidder shall identify all features and capabilities that are not fully developed or do not have a verifiable satisfactory field performance record. If the Owner allows these features to be bid as separate Projects, then they are to be individually listed under Columns 1 through 10, in Article I, Section 1. These unproven features and capabilities are to be individually listed in this Section 2 also, with liquidated damages amounts determined by the Owner and stated for each. If a Bidder neglects to identify any such feature at the technical session, delay in providing the feature is considered a delay in completing the associated Project and the Owner may assess liquidated damages listed for that Project regardless of whether the Project is placed in service.

**Section 3. Consequential Damages.** In no event shall the Bidder's liability for incidental or consequential loss or damage, except for personal injury or tangible property damage, exceed the amount of ten times the total contract price, as amended.

**Section 4. Enforcement of Remedies by Administrator.** The Administrator may on behalf of the Owner exercise any right or enforce any remedy which the Owner may exercise or enforce hereunder.

**Section 5. Cumulative Remedies.** Every right or remedy herein conferred upon or reserved to the Owner or the Administrator shall be cumulative and shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election; provided, however, that the provisions of Section 2 of this Article V shall be the exclusive measure of damages for failure by the Bidder to have effected the Completion of Project within the time herein agreed upon.

## ARTICLE VI

### Equal Employment

#### Section 1. The Bidder.

(a) The Bidder represents that:

(1) It has, \_\_\_\_\_ does not have \_\_\_\_\_, 100 or more employees, and if it has, that

(2) It has \_\_\_\_\_, has not \_\_\_\_\_, furnished the Equal Employment Opportunity Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 and Title VII of the Civil Rights Act of 1964.

(b) The Bidder agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

(c) The Bidder agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this contract will amount to more than \$10,000, the Bidder will file such report, as required by law, and notify the Owner in writing of such filing prior to the Owner's acceptance of this Proposal.

(d) The Bidder certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The Bidder agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Bidder agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding

\$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

**Section 2. During the performance of this contract, the Contractor agrees as follows:**

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Contractor will send to each labor union or representative of workers with which the Bidder has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the Contractor's books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with



procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in the said Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including actions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **Section 3. Equal Employment Opportunity Specifications.**

(a) As used in these specifications:

"Covered area" means the geographical area described in the solicitation from which this contract resulted;

"Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

"Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941; and

"Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(c) If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) The Contractor shall implement the specific affirmative action standards provided in paragraphs (g) (i) through (xvi) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (g) (ii) above.

(vi) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(xiv) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xv) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(xvi) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

(h) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (g) (i) through (xvi). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under (g) (i) through (xvi) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take

affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of Executive Order 11246 if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of Executive Order 11246 if a specific minority group of women is underutilized).

(j) The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(m) The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (g) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**Section 4. In this Article VI -**

(a) The term "Contractor" shall also mean "Bidder" or "Subcontractor" as applicable.

(b) The provisions of Sections 2 & 3 are applicable to the extent required by law. In determining whether these Sections are applicable, reference should be made to Office of Federal Contract Compliance Programs regulations (41 CFR Part 60).

## ARTICLE VII

### Miscellaneous

#### Section 1. Definitions.

The term "Completion of the Contract" shall mean accomplishment of Completion of the Project for all central offices (and associated remote switching terminals), features and services listed under Column 1, "Project," in Article I, Section 1, and all alternates accepted by the Owner, on the Owner's Acceptance.

The term "Completion of Installation" shall mean full performance by the Bidder of the Bidder's obligation under the Contract and all amendments and revisions thereof, for a Project, except that it shall not include the acceptance tests nor performance of the Bidder's obligations in respect of (i) releases of lien and Certificate of Contractor under Article III, Section 2, hereof and (ii) other final documents. The actual date of Completion of Installation shall be the date the Bidder submits to the Owner written notification that the Project is completed in conformance with the Specifications and ready for the Owner's acceptance inspection and tests as provided for under Article II, Section 4.

The term "Completion of the Project" shall mean full performance by the Bidder of the Bidder's obligations herein set out and all amendments and revisions thereof for a central office (and all associated remote switching terminals), feature or service. The scheduled date for Completion of the Project is sixty (60) days after Completion of Installation as specified under Column 7, "Completion of Installation," in Article I, Section 1, as amended or adjusted under Article II, Section 1, and Section 4. The scheduled date for Completion of the Project is the date from which liquidated damages are computed. The actual date of Completion of the Project shall be the date of the receipt by the Owner from the Bidder of (a) all documents listed in Article III, Section 2, (b) other final documents, and (c) written notification that all deficiencies listed on the REA Form 517, Results of Acceptance Test, have been corrected; provided, that the final inspection and tests by the Owner finds the deficiencies satisfactorily resolved. If the deficiencies have not been satisfactorily resolved, the actual date of Completion of the Project shall be the date that the deficiencies are fully and satisfactorily resolved as determined by subsequent Owner's tests. The Certificate of Completion approved and signed by the Owner and approved in writing by the Administrator shall be conclusive evidence as to the fact of Completion of the Project and the date thereof. Full compliance with the procedure for "Completion of the Project" and an individual Certificate of Completion is required for each Project listed under Column 1, "Project," in Article I, Section 1.



The "Contract" shall consist of the Notice and Instructions to Bidders, the Bidder's Proposal and the Owner's Acceptance, the Contractor's Bond and the Specifications.

The term "days" shall mean calendar days.

The term "minor errors or irregularities" shall mean a defect or variation in a Bidder's bid that is a matter of form and not of substance. Errors or irregularities are "minor" if they can be corrected or waived without being prejudicial to other Bidders and when they do not affect the price, quantity, quality, or timeliness of construction. Unless otherwise noted, the borrower determines whether an error or irregularity is "minor."

The term "placed in service" shall mean used by the Owner to earn revenue.

The term "Project" shall mean a central office and all associated remote switching terminals (if any), a remote switching terminal if purchased without a supporting central office, a feature (or group of features), or a service (or group of services), which is listed under Column 1, "Project," in Article I, Section 1. The only instance in which a remote switching terminal can constitute a separate Project is where such remote switching terminal is purchased with associated modifications to its supporting host switch but no other modifications to the host switch are specified. A Project will have a single completion schedule listed under Column 7, "Completion of Installation," in Article I, Section 1, and a single liquidated damages amount shown in Article V, Section 2. The Contract may consist of one or more Projects.

The term "Software" shall mean computer programs contained on a tape, disc, semiconductor device or other memory device or system memory consisting of logic instructions and instruction sequences in machine-readable object code, which manipulate data in the central processor, control and perform input/output operations, perform error diagnostic and recovery routines, control call processing, and perform peripheral control, and administrative and maintenance functions; as well as associated documentation, excluding source code, used to describe, maintain and use the programs provided under the Contract.

The term "Specifications" shall mean the minimum performance requirements of the Owner as contained in the documents listed below, which are either attached or become a part of the Contract by reference, as amended by specific written exceptions contained in the Bidder's proposal and accepted by the Owner and the Administrator:

REA Form \_\_\_\_\_, dated \_\_\_\_\_  
REA Form \_\_\_\_\_, dated \_\_\_\_\_  
REA Form \_\_\_\_\_, dated \_\_\_\_\_

**Section 2. Continuing Equipment Support. Parts, Service, and Software.** In addition to warranty repairs and replacement, the Bidder shall offer repair service and repair parts to the Owner in accordance with the Bidder's practices and terms then in effect, for the Bidder's manufactured equipment furnished pursuant to this Agreement. Such repair service or repair parts shall be available for as long as the Bidder is manufacturing or stocking such equipment, or for no less than eight (8) years after the Bidder has ceased manufacturing or offering for sale such equipment. The Bidder shall also offer software support services to the Owner in accordance with the Bidder's practices, terms, and charges then in effect, but in any event for no less than five (5) years after the Bidder has ceased manufacturing or offering for sale such software.

**Section 3. Materials and Supplies.** The Bidder shall use only such unmanufactured articles, materials and supplies as have been mined or produced in the United States, Mexico or Canada and only such manufactured articles, materials and supplies as have been manufactured in the United States, Mexico or Canada substantially all from articles, materials or supplies mined, produced or manufactured, as the case may be, in the United States, Mexico or Canada; provided that foreign articles, materials or supplies may be used in the event and to the extent that the Administrator shall expressly authorize in writing such use pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. The Bidder agrees to submit to the Owner such certificate or certificates, signed by the Bidder and all subcontractors, with respect to compliance with the foregoing provision as the Administrator from time to time may require.

**Section 4. Bond.** The Bidder shall furnish to the Owner a Contractor's Bond in conformance with the requirements of 7 CFR Part 1788, Subpart C.

**Section 5. Confidentiality.** All information supplied by the Bidder to the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Owner, shall be treated by the Owner as confidential information, and the Owner shall not reproduce any such information except for its own internal use and as authorized by this Contract, and shall use any information only for archival backup, in-house training, operating, maintenance and administrative purposes and in conjunction with its use of the equipment, materials and software furnished hereunder. All information supplied to the Bidder by the Owner which bears a legend or notice restricting its use, copying, or dissemination, except insofar as it may be in the public domain through no acts attributable to the Bidder, shall be treated by the Bidder as confidential information, and shall not be used by the Bidder for

any purpose adverse to the interests of the Owner, and shall not be reproduced or distributed by the Bidder except for the Bidder's use in its performance under this Contract. The foregoing confidentiality obligations do not apply to information which is independently developed by the receiving party or which is lawfully received by the receiving party free of restriction from another source having a right to so furnish such information, or is already known to the receiving party at the time of disclosure free of restriction. If the Bidder has failed to provide continuing equipment support as described in Article VII, Section 2, the Owner is released from this obligation. This provision does not restrict release of information by the United States of America pursuant to the Freedom of Information Act or other legal process.

**Section 6. Entire Agreement.** The terms and conditions of this Contract as approved by REA supersede all prior oral or written understandings between the parties. There are no understandings or representations, expressed or implied, not expressly set forth herein.

**Section 7. Survival of Obligations.** The rights and obligations of the parties, which by their nature, would continue beyond the termination, cancellation, or expiration of this Contract, shall survive such termination or expiration.

**Section 8. Non-Waiver.** No waiver of any terms or conditions of this Contract, or the failure of either party to enforce strictly any such term or condition on one or more occasions, shall be construed as a waiver of the same or of any other terms or conditions of this Contract on any other occasion.

**Section 9. Releases Void.** Neither party shall require releases or waivers of any personal rights from representatives or employees of the other in connection with visits to its premises, nor shall such parties plead such releases or waivers in any action or proceeding.

**Section 10. License.** The Bidder shall comply with all applicable construction codes.

(a) The Bidder warrants that it possesses contractor's license number \_\_\_\_\_ issued to it by the State of \_\_\_\_\_ in which the project(s) is located, and said license expires on \_\_\_\_\_, 19\_\_.

(b) The Bidder warrants that no license is required in the state in which the Project(s) is located.

(Bidder shall cross out that subsection that does not apply)

**Section 11. Nonassignment of Contract.** The Bidder shall not assign the Contract, effected by acceptance of this Proposal, or any part hereof, or enter into any contract with any person,

firm or corporation, for the performance of the Bidder's obligations hereunder, or any part hereof, without the approval in writing of the Owner, the Surety, and the Administrator. However, the Bidder may subcontract the whole or any part of the installation work to be performed at the installation site, (as distinguished from furnishing and delivery of equipment and materials), provided that; (a) the Bidder shall remain responsible for the performance thereof and (b) the Bidder shall obtain the consent of the surety to such subcontract. A copy of such consent shall be submitted to the Owner and the Administrator.

**Section 12. Choice of Law.** The rights and obligations of the parties and all interpretations and performance of this Contract shall be governed in all respects by the laws of the State of \_\_\_\_\_ except for its rules with respect to the conflict of laws.

**Section 13. Approval of the Administrator.** The acceptance of this proposal by the Owner shall not create a contract unless such acceptance shall be approved in writing by the Administrator within ninety (90) days after the date hereof:

By \_\_\_\_\_  
(Signature of Bidder)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name - Type or Print)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Company Name of Bidder)

\_\_\_\_\_

\_\_\_\_\_  
(Address of Bidder)

Attest:

\_\_\_\_\_  
(Secretary)

The Proposal must be signed with the full name of the Bidder. In the case of a partnership the Proposal must be signed in the firm

name by each partner. In the case of a corporation the Proposal must be signed in the corporate name by a duly authorized officer and the Corporate seal affixed and attested by the Secretary of the Corporation.

(If executed by other than the President, a Vice-President, a partner or the individual owner, a power of attorney or other legally acceptable document authorizing execution shall accompany this contract, unless such power of attorney is on file with REA.)

**ACCEPTANCE**

Subject to the approval of the Administrator, the Owner  
hereby accepts the Proposal of \_\_\_\_\_

\_\_\_\_\_

for the Project(s) herein described for the Total Base Bid of  
\$ \_\_\_\_\_ and

Alternate For:

Spare Parts, Item(s)..... \$ \_\_\_\_\_

Maintenance Tools, Item(s)..... \$ \_\_\_\_\_

Alternate No. 1 (add) (deduct)..... \$ \_\_\_\_\_

Alternate No. 2 (add) (deduct)..... \$ \_\_\_\_\_

Alternate No. 3 (add) (deduct)..... \$ \_\_\_\_\_

Alternate No. 4 (add) (deduct)..... \$ \_\_\_\_\_

Alternate No. 5 (add) (deduct)..... \$ \_\_\_\_\_

Alternate No. 6 (add) (deduct)..... \$ \_\_\_\_\_

The total contract price is..... \$ \_\_\_\_\_

By \_\_\_\_\_  
OWNER

ATTEST:

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
DATE OF ACCEPTANCE